

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8443

Petition of Vermont Solar Farmers, LLC,)
requesting a Certificate of Public Good pursuant)
to 30 V.S.A. § 248, authorizing the construction)
of the "Bondville Solar Farm" consisting of a)
solar electric generating facility of up to 2.2)
MW, to be located off Gleason Hill Road at)
219 VT Route 30 in Bondville, Vermont)

Order entered: 7/27/2015

ORDER DENYING MOTION IN LIMINE TO EXCLUDE TESTIMONY AND MOTION TO STAY

I. INTRODUCTION AND BACKGROUND

On January 23, 2015, Vermont Solar Farmers, LLC ("Petitioner") filed a petition with supporting prefiled testimony and exhibits seeking a certificate of public good, pursuant to 30 V.S.A. § 248, for authority to construct a solar electric generating facility to be located off Gleason Hill Road at 219 VT Route 30 in Bondville, Vermont (the proposed "Project"). On May 18, 2015, intervenors in this proceeding, Jeanne MacIntyre and Richard Moccia ("Intervenors"), submitted prefiled testimony concerning the Project and its potential impact on their property.

On June 12, 2015, the Petitioner filed a motion *in limine*¹ to exclude portions of the Intervenors' prefiled testimony as inadmissible ("Objection to Admissibility"). On June 25, 2015, the Intervenors filed their opposition to the Petitioner's Objection to Admissibility with a corresponding motion to stay the proceedings ("Motion to Stay").

1. The Petitioner seeks relief under Board Rule 2.216(C), which governs objections to the admissibility of prefiled testimony or exhibits; accordingly, the Petitioner's motion to exclude is more properly styled as an objection to admissibility.

In this Order, I overrule the Objection to Admissibility and deny the Motion to Stay for the reasons stated below.

II. POSITIONS OF THE PARTIES

Objection to Admissibility

Petitioner seeks to exclude all testimony by the Intervenors that relates to property rights over Gleason Hill Road. In its Objection to Admissibility, Petitioner sets forth the applicable standard of review for admissibility of prefiled testimony or exhibits, and argues that personal property rights and ownership over Gleason Hill Road are not within the scope of the proceeding and therefore should be excluded. Specifically, Petitioner seeks to strike lines 12-14 on page 2 and lines 8-14 on page 6 of the Intervenors' prefiled testimony as irrelevant to the proceeding.

Motion to Stay

Intervenors request that the Board stay these proceedings until Petitioner establishes a *prima facie* case that it has a legal right to use the discontinued right of way known as Gleason Hill Road as access to Petitioner's property. Intervenors argue that Petitioner has provided no evidence to the Board to show that it owns or has a right to use the land over which Gleason Hill Road once ran. Intervenors further contend that the Board should either require Petitioner to make that initial showing of its right to use Gleason Hill Road for access to the Project or deny the petition. In the absence of such a showing by the Petitioner, Intervenors conclude, the Board should stay this proceeding until such evidence is produced.

III. DISCUSSION AND CONCLUSION

In ruling on an objection to the admissibility of testimony, the Board decides whether that testimony should be allowed into the evidentiary record pursuant to the Rules of Evidence and the discretion accorded the Board in the Administrative Procedures Act at 3 V.S.A. § 810(1). In contrast to a superior court, the Board's review of a project under 30 V.S.A. § 248 is as an expert body that is engaged in a "legislative, policy-making process." In administrative proceedings

such as these, the Board is the trier of fact and there is no jury to protect from unreliable evidence.

The testimony submitted by the Intervenor is focused on the potential impacts the Project may have on Intervenor's property. Intervenor MacIntyre testifies that the southern boundary of her property extends to the centerline of the Gleason Hill Road, which Petitioner has proposed to use for access to the Project site. Intervenor jointly propose that the Board require the Petitioner to pursue alternative means of access to the Project that would resolve their concerns regarding the use of Gleason Hill Road for access to the Project. It is these two statements – regarding the southern boundary of intervenor property and the alternative access proposal – that Petitioner seeks to exclude.

I disagree with Petitioner that either of the two statements is wholly irrelevant to the proceeding at hand or unfairly prejudicial to the Petitioner. Both statements are relevant to the extent that they tend to inform the Board regarding the potential impacts from the proposed Project and the related proposed means of access to the Project site. I therefore overrule the Objection to Admissibility.

I also deny the Intervenor's Motion to Stay. Section 248 does not require the Board to determine property rights regarding either the Project site or the proposed access route to the site. The Board is required, however, to determine the impact of the proposed Project on certain criteria enumerated in Section 248. The Intervenor has not explained how a determination of the disputed property rights will inform the Board's evaluation of the Project under Section 248. I therefore find no grounds on which to stay the proceedings.

SO ORDERED.

Dated at Montpelier, Vermont, this 27th day of July, 2015.

s/ Lynn Fabrizio

Lynn Fabrizio, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: July 27, 2015

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)